Supreme Court, U. S.
FILED
DEC 13 1975
MICHAEL RODAK, JR., CLERK

Nos. 75-651, 75-715, and 75-720

IN THE

Supreme Court of The United States

OCTOBER TERM, 1975

TEAMSTERS LOCAL UNION 657, *Petitioner*
vs
ERNEST HERRERA, TRINI URIBE, and MARIO MELCHOR, *Respondents*
and
TEAMSTER LOCAL UNION 657, *Petitioner*
vs
PATRICK RESENDIS, TONY RESENDIS, WILBURN WHITE, ARTURO RODRIGUEZ, and ELIAS RODRIGUEZ, *Respondents*

SOUTHERN CONFERENCE OF TEAMSTERS, *Petitioner*
vs
ERNEST HERRERA, TRINI URIBE and MARIO MELCHOR, *Respondent*
and
SOUTHERN CONFERENCE OF TEAMSTERS, *Petitioner*
vs
PATRICK RESENDIS, TONY ESCOBEDO, WILBURN WHITE, ARTURO RODRIGUEZ and ELIAS GONZALEZ

LEE WAY MOTOR FREIGHT INC., *Petitioner*
vs
PATRICK RESENDIS, TONY ESCOBEDO, WILBURN WHITE, ARTURO RODRIGUEZ, and ELIAS GONZALEZ
and
YELLOW FREIGHT SYSTEM INC., *Petitioner*
vs
ERNEST HERRERA, TRINI URIBE and MARIO MELCHOR

On Petitions For Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

Memorandum For Respondents' Herrera, Uribe, Melchor, Resendis, Escobedo, and Gonzalez In Opposition To The Petitions For Writ of Certiorari

RUBEN MONTEMAYOR
HARRY A. NASS, JR.
301 W. Market
San Antonio, Texas 78205
Attorneys for Respondents

INDEX

Page

NATURE OF THE CASE ____ 2

REASONS FOR DENYING WRITS ____ 3

CONCLUSION ____ 8

CERTIFICATE OF SERVICE ____ 9

CASES CITED

Pages

Alabama vs. The United States,
304 F. 2d 583, 586 (5th Cir. 1962); 371 U.S. 37 (1962) 4

Bing vs. Roadway Express Inc.,
444 F. 2d 686 (5th Cir. 1971) 3, 4, 6

Bing vs. Roadway Express Inc.,
485 F. 2d 441 (5th Cir. 1973) 7

Carey vs. Greyhound Bus Co.,
500 F. 2d 1372 (5th Cir. 1974) 6

Herrera vs. Yellow Freight System Inc.,
505 F. 2d 66 (5th Cir. 1974) 2

Jones vs. Lee Way Motor Freight Inc.,
431 F. 2d 245, (10th Cir. 1970) cert den 401 U.S. 954 ..... 3, 4

McDonnell Douglas Corp. vs. Green,
411 U.S. 792 (1973) 3, 4, 5

Robinson vs. Lorillard
444 F. 2d 798 8

Rodriguez vs. East Texas Motor Freight,
505 F. 2d 40 (5th Cir. 1974) 2

Thornton vs. East Texas Motor Freight,
497 F. 2d 416, (6th Cir. 1973) 2, 5, 7

United States vs. Central Motor Lines Inc.,
(W. D. NC 1971) 338 F. Supp 798 7

United States vs. St. Louis - San Francisco Railway Co.,
464 F. 2d 301 8

STATUTES CITED

42 U.S.C. § 2000 e2 2

42 U.S.C. § 1981 2

IN THE

Supreme Court of The United States

OCTOBER TERM, 1975

No. 75-651

TEAMSTERS LOCAL UNION 657, *Petitioner*
vs
ERNEST HERRERA, TRINI URIBE, and MARIO MELCHOR, *Respondents*
and
TEAMSTER LOCAL UNION 657, *Petitioner*
vs
PATRICK RESENDIS, TONY RESENDIS, WILBURN WHITE, ARTURO RODRIGUEZ, and ELIAS RODRIGUEZ, *Respondents*

No. 75-715

SOUTHERN CONFERENCE OF TEAMSTERS, *Petitioner*
vs
ERNEST HERRERA, TRINI URIBE and MARIO MELCHOR, *Respondent*
and
SOUTHERN CONFERENCE OF TEAMSTERS, *Petitioner*
vs
PATRICK RESENDIS, TONY ESCOBEDO, WILBURN WHITE, ARTURO RODRIGUEZ and ELIAS GONZALEZ

No. 75-720

LEE WAY MOTOR FREIGHT INC., *Petitioner*
vs
PATRICK RESENDIS, TONY ESCOBEDO, WILBURN WHITE, ARTURO RODRIGUEZ, and ELIAS GONZALEZ
and
YELLOW FREIGHT SYSTEM INC., Petitioner
vs
ERNEST HERRERA, TRINI URIBE and MARIO MELCHOR

Motion On Petitions For Writs Of Certiorari To The United States Court Of Appeals For The

Memorandum For The Respondents In Opposition To The Petitions For Writs Of Certiorari Fifth Circuit

NATURE OF THE CASES

Respondents, Ernest Herrera, Trini Uribe, and Mario Melchor sued Petitioners, Yellow Freight System Inc., Local 657 of The Teamsters Union, The Southern Conference of Teamsters and The International Brotherhood of Teamsters claiming a violation of Title 42 U.S.C. 2000 e-2 and Title 42 U.S.C. 1981.

The District Court found no discrimination and The Fifth Circuit Court of Appeals reversed and remanded as to everyone except the International Brotherhood of Teamsters, 505 F. 2d 66.

Respondents, Patrick Resendis, Tony Escobedo, Elias Gonzalez sued Lee Way Motor Freight Inc., and the union organizations for violation of 42 U.S.C. 2000 e-2 and Title 42 U.S.C. 1981. The District Court denied relief and the Fifth Circuit reversed and remanded as to all parties except the International Brotherhood of Teamsters, 505 F. 2d 69.

REASONS FOR DENYING WRITS

Your Respondents were all employed as city drivers by Yellow Freight System Inc., and Lee Way Motor Freight Inc. All Respondents are of Mexican-American descent, surname and members of Local 657 of the Teamsters Union.

Their claim is that the no-transfer policy of their employers and the maintenance of separate senority rosters by virtue of the negotiations by the Southern Conference of Teamsters as agent for Local 657 of the Teamsters resulted in a discriminatory "lock in" to lower paying positions as city drivers and prevented Respondents from bettering themselves by obtaining jobs as road drivers.

The actions filed against the employers and unions are not class actions but were brought on behalf of the individual Respondents.

All three Petitions for Certiorari herein take the position that the United States Court of Appeals opinions herein are in conflict with the holding of this Honorable Court in **McDonnell Douglas Corp. vs. Green** 411 U.S. 792 (1973) and the holding of the Sixth Circuit Court of Appeals in **Thornton vs. East Texas Motor Freight,** 497 F. 2d 416 (6th Cir. 1973).

Respondents maintain that the basis of their suit rests upon the rule as announced in **Jones vs. Lee Way Motor Freight Inc.,** 431 F. 2d 245, (10th Cir 1970) cert den 401 U.S. 954 and **Bing vs. Roadway Express Inc.,** 444 F. 2d 686 (5th Cir. 1971).

The evidence of the "lock in" must necessarily depend on the statistical balance or imbalance exist-

ing in the job position in question. The statistical approach to this problem was approved by this Court in **Alabama vs. The United States,** 304 F. 2d 583, 586 (5th Cir. 1962); 371 U.S. 37 (1962).

Petitioners argue that **McDonnell Douglas** (supra) requires that the individuals have the burden of proving an application for a road driving job and that they were qualified to hold same.

The Petitioner's argument totally ignores the footnote 13 of this opinion at 411 U.S. 802, which says "The facts necessarily will vary in Title VII cases, and the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations."

The Fifth Circuit opinion points out that in **McDonnell Douglas** (supra) there was no past history of employment discrimination. The situation in Respondents' cases being different in that under the holding of **Jones vs. Lee Way** (supra) and **Bing vs. Roadway** (supra), there was a history of past discrimination.

It must also be pointed out that all Respondents were city drivers for their respective companies. The statistics in the Lee Way case shows that Lee Way has only had one Mexican-American road driver domiciled at their San Antonio, Terminal. This one individual was Arturo Rodriguez, one of the original complaintants. The statistics show that Twenty-five of the city drivers employed by Lee Way were Mexican-American. The contrast in the percentage of Mexican-American and Anglo line drivers drama-

tically shows the history of past discrimination.

The statistics in the Yellow Freight case show that of ninety-six line drivers employed at the time of commencement of this suit no Mexican-American road drivers were employed by Yellow Freight at either of its Two Texas Terminals.

It must be remembered that at the trial level the District Court found no discrimination concerning any of the complaints made by Respondents. The Fifth Circuit held that the discrimination which the statistics showed constituted past discrimination in the hiring of road drivers. The discrimination was continued by the no-transfer policy of both companies which refused to permit minority city drivers to carry over their competitive status senority to road driving jobs.

Petitioners overlook the fact that the Fifth Circuit did not hold in favor of the Appellants Rodriguez, and White. It is obvious that the Fifth Circuit applied the **McDonnell Douglas** (supra), standards. The real discrimination in the eyes of the Fifth Circuit was the history of hiring discrimination and the denial of opportunity to show that they were qualified for road driving jobs.

The Petitioner Unions take the position that the holding of the Fifth Circuit is in conflict with the Sixth Circuit holding in **Thornton vs. East Texas Motor Freight,** 497 F. 2d 416 (6th Cir 1974). The Court in **Thornton** (supra) was faced with a totally different situation. The primary question was what remedy the complaintants should be granted concerning the Local Union. The bargaining party, the

Southern Conference of Teamsters had been dismissed by the District Court. The important difference in the instant cases is that the remedy question was never considered by the District Court because of the findings of no discrimination.

It is, therefore contended that the real discrimination that the Petitioner Unions participated in was the maintenance of the separate contracts for city and road drivers.

Respondents contend that the real question is whether or not the Petitioner unions acquiesed in a racially discriminatory senority system as was the case in **Carey vs. Greyhound Bus Co.** 500 F. 2d 1372 (5th Cir 1974). The Fifth Circuit in the last cited case took the position that when a senority system locks black employees into low paying jobs, the employer and a predominantly white union can be held liable for back pay for maintaining the discriminatory system and a predominantly black union can also be held liable for back pay for acquiesing in the system.

The **Bing** (supra) and **Jones** (supra) cases hold the no-transfer rule to be discriminatory and in violation of the Civil Rights Act of 1964. The National Master Freight Agreement is negotiated on a national level. The National Master Freight Agreement covers both city drivers and road drivers. The supplemental agreements are negotiated on an area wide basis by the local representatives of unionized trucking companies in that area. In the instant cases the supplemental agreements were negotiated by the Southern Conference of Teamsters and administered by Local

Union 657. Local 657 represents all Respondents in the instant cases. While the local union had nothing to do with hiring, the local was certainly aware that the surrender of senority required to take a road driving job would discourage and prevent the minority members of the local from transfering to the road. Put another way, the maintenance of separate senority rosters for city and road drivers is the same thing as the employer's no-transfer policy because both require the surrender of senority at the time of transfer. Thus, the unions have joined hands with the employers to further the past discriminatory practices of the employer.

Local 657 contends that they have no road drivers in their jurisdiction. This is not so. Arturo Rodriguez was a road driver for Lee Way and since this litigation has commenced Petitioner, Patrick Resendis, has been on the road.

Local 657 relies on the fact that their members defeated a proposal to merge city and road drivers contracts. This they contend expresses the will of a majority of drivers for the separate contracts. Respondents contend that the Petitioner unions should have taken some kind of action to allow qualified minority city drivers to transfer to road driving jobs on a one-time only basis with senority carry-over. See **Thornton vs. East Texas Motor Freight** (supra), **Bing vs. Roadway Express Inc.**, 485 F. 2d 441; **United States vs. Central Motor Lines, Inc.**, (W.D. NC 1971) 338 F. Supp 798.

The existence of the above mentioned reasonable course of action destroys the business necessity argu-

ment of the Union Petitioner. **United States vs. St. Louis - San Francisco Railway Co.**, 464 F. 2d 301 at 308; **Robinson vs. Lorillard,** 444 F. 2d at 798.

The Petitioner Union Organizations and management take the position that the Respondents did not make applications for road driving jobs. Respondents contend that an application made by any of them would, in view of the hiring policies in effect at the time of the filing of these suits any application would have been futile. They all had been denied the opportunity to show their qualifications because they had been denied the opportunity to take a road driving test and prove their qualifications, **Witherspoon vs. Mercury Van Lines Inc.**, 457 F. 2d 496, (5th Cir 1972).

In the Yellow Freight System Inc., case there is evidence that Respondent Trini Uribe had his superior write a letter to the man in charge of hiring road drivers at the Baxter Springs Kansas terminal. This application was ignored by the employer.

CONCLUSION

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

Respectfully submitted,

RUBEN MONTEMAYOR
301 W. Market
San Antonio, Texas 78205

HARRY A. NASS, JR.
301 W. Market
San Antonio, Texas 78205

Attorneys for Respondents

CERTIFICATE OF SERVICE

In accordance with the rules of this court, true copies of the foregoing have been served upon the following counsel of record by placing same in the United States Mail postage prepaid on this 11th day of December, 1975.

Mr. Paul Scott Kelly, Jr.
Mr. Raymond F. Beagle, Jr.
Gage & Tucker
1000 Bryant Bldg.
Kansas City, Missouri 64106

Mr. Theo F. Weiss
1805 National Bank of Commerce Bldg.
San Antonio, Texas 78205

Mr. Edward W. Penshorn
519 Majestic Bldg.
San Antonio, Texas 78205

Mr. L. N. D. Wells, Jr.
Mr. G. William Babb
Suite 200 - 8204 Elmbrook Drive
Dallas, Texas

Mr. David Previant
211 West Wisconsin Avenue
Milwaukee Wisconsin 53203

Ms. Velma S. Martinez
Mexican American Legal Defense and
Educational Fund
145 Ninth Street
San Francisco, California

Mr. James Heidelberg
255 San Antonio Bank & Trust Bldg.

711 Navarro
San Antonio, Texas 78205

RUBEN MONTEMAYOR

HARRY A. NASS, JR.